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Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Protecting human rights and fundamental freedoms while countering terrorism

Report of the Secretary-General

Summary

The General Assembly, in resolution 64/168, reaffirmed that States must ensure that any measure taken to combat terrorism complies with their obligations under international law, in particular human rights, refugee and humanitarian law, and urged States countering terrorism to fully comply with their obligations under international law, including in a number of specific areas. The present report is submitted pursuant to that resolution. It refers to recent developments within the United Nations system in relation to human rights and counter-terrorism, including through the activities of the Office of the United Nations High Commissioner for Human Rights, the Human Rights Council and its various special procedures mandates, the human rights treaty bodies, the Counter-Terrorism Implementation Task Force and its Working Group on Protecting Human Rights while Countering Terrorism, the Counter-Terrorism Committee and the Counter-Terrorism Committee Executive Directorate. It reports on the consideration by the United Nations human rights system of issues, including compliance of legislation, policies and practices for countering terrorism with international law, including international human rights law.

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I. Introduction

1. In its resolution 64/168 the General Assembly, inter alia, (a) expressed serious concern at the occurrence of violations of human rights and fundamental freedoms, as well as international refugee and humanitarian law, committed in the context of countering terrorism; (b) urged States countering terrorism to fully comply with their obligations under international law, including with regard to the absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment; ensure that all persons deprived of liberty benefit from the guarantees to which they are entitled under international law, including the review of the detention and other fundamental judicial guarantees; ensure that no form of deprivation of liberty places a detained person outside the protection of the law; ensure due process obligations and the right to a fair trial; respect non-refoulement obligations; ensure legality in the criminalization of acts of terrorism; and ensure the right to an effective remedy; (c) highlighted the need to protect all human rights, including economic, social and cultural rights; (d) noted the need to continue ensuring that fair and clear procedures under the United Nations terrorism-related sanctions regime are strengthened to enhance their efficiency and transparency; (e) urged States to ensure the rule of law and to include adequate human rights guarantees in their national listing procedures; (f) requested the Office of the United Nations High Commissioner for Human Rights (OHCHR) to continue to contribute to the work of the Counter-Terrorism Implementation Task Force, including by raising awareness on the need to protect human rights and the rule of law while countering terrorism; and (g) encouraged the Security Council and its Counter-Terrorism Committee to strengthen dialogue with relevant human rights bodies, in particular with OHCHR, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, other relevant special procedures and mechanisms of the Human Rights Council and relevant treaty bodies.

2. I was requested to submit a report on the implementation of resolution 64/168 to the General Assembly at its sixty-fifth session. The present report also responds to the request of the former Commission on Human Rights for the High Commissioner to report to the General Assembly on the implementation of Commission resolution 2005/80. The report refers to recent developments within the United Nations system in relation to human rights and counter-terrorism, including through the activities of the United Nations High Commissioner for Human Rights, OHCHR, the Human Rights Council and its various special procedures, the human rights treaty bodies, the Counter-Terrorism Committee and the Counter-Terrorism Committee Executive Directorate, and the Counter-Terrorism Implementation Task Force and its Working Group on Protecting Human Rights while Countering Terrorism.

II. Recent developments in the United Nations in the area of human rights and counter-terrorism

A. United Nations Global Counter-Terrorism Strategy and the Counter-Terrorism Implementation Task Force

3. The Counter-Terrorism Implementation Task Force continues to work to ensure overall coordination and coherence in the counter-terrorism efforts of the United Nations system. The Working Group on Protecting Human Rights While Countering Terrorism, led by OHCHR,[1] continues to assist States in implementing the human rights aspects of the United Nations Global Counter-Terrorism Strategy, in particular those contained in the fourth pillar, entitled "Measures to ensure respect for human rights for all and the rule of law as the fundamental basis of the fight against terrorism". A detailed overview of the activities of the Counter-Terrorism Implementation Task Force and its Working Groups is contained in the forthcoming report of the Secretary-General on the United Nations Global Counter-Terrorism Strategy.

4. The Working Group has focused on the development of a set of basic human rights reference guides to assist Member States in strengthening the protection of human rights in the context of counter-terrorism. These tools aim to provide guidance to State authorities, national and international non-governmental organizations, legal practitioners, and United Nations agencies, as well as individuals, on how human rights compliant measures may be adopted in a number of counter-terrorism areas. The first five guides deal with the stopping and searching of persons, security infrastructure, detention in the context of counter-terrorism, the principle of legality in national counter-terrorism legislation and the proscription of organizations. The Working Group aims to present the first two guides during the review of the Global Counter-Terrorism Strategy by the General Assembly in September 2010.

5. All guides have the same format: an introduction, which sets forth definitions, key issues and the purpose of the guide, followed by a series of guiding principles, guidelines and reference materials. The guide on stopping and searching recalls that all stop and search measures to counter-terrorism must comply with international human rights law. It focuses on the impact that stop and search measures may have on the right to personal integrity and dignity, the principles of equality and non-discrimination, the right to freedom of movement and the right to privacy. It highlights the need for appropriate safeguards and oversight in the adoption and the implementation of stop and search measures, as well as the conditions that need to be respected should a State need to restrict the enjoyment of human rights for the purpose of countering terrorism.

6. The guide on security infrastructure highlights that all measures to prevent and deter terrorist acts, including those related to security infrastructure, must fully

[1] Other members include the Special Rapporteur on the promotion and protection of human rights while countering terrorism, the United Nations Office on Drugs and Crime, the Counter-Terrorism Executive Directorate (CTED), the Office of Legal Affairs of the United Nations Secretariat, the United Nations Interregional Crime and Justice Research Institute, the World Bank, the International Maritime Organization and the 1267 Monitoring Committee; the Office for the Coordination of Humanitarian Affairs and INTERPOL participate as observers.

comply with States' international human rights obligations. It focuses on the impact that security infrastructure may have on the enjoyment of a range of human rights, including the principles of equality and non-discrimination, the right to freedom of movement, the right to seek asylum and the right to privacy. The guide also sets out the framework for limitations and derogations, and stresses the need for accountability where violations have occurred. Finally, the guide touches upon the impact of security infrastructure on the enjoyment of economic, social and cultural rights.

7. Other working groups of the Counter-Terrorism Implementation Task Force continue to address human rights issues in their work, including initiatives of the working group on highlighting and supporting victims, and the integrated assistance for countering terrorism initiative, through which the Task Force has developed a methodology to enable partnering Member States to address their requests for assistance related to all four pillars of the Global Strategy through one entry point.

B. Counter-Terrorism Committee/Counter-Terrorism Committee Executive Directorate

8. The Counter-Terrorism Committee and the Counter-Terrorism Committee Executive Directorate continue to take relevant human rights concerns into account in their work programmes focused on the implementation of Security Council resolutions 1373 (2001) and 1624 (2005). In line with the mandate provided by the General Assembly in its resolution 64/168, the Executive Directorate continued to liaise with OHCHR, the Special Rapporteur on the promotion and protection of human rights while countering terrorism, and other human rights entities. At the regional level, the Executive Directorate continued its dialogue on relevant human rights issues with the Council of Europe, including in the context of workshops in South-East Europe. The Executive Directorate organized two regional workshops for senior law enforcement and prosecution officials in South Asia, with the participation of OHCHR, in Dhaka from 8 to 10 November 2009 and in Colombo from 8 to 10 June 2010. It also continued its active participation in the work of the Counter-Terrorism Implementation Task Force working group on the protection of human rights while countering terrorism, chaired by OHCHR.

C. Human Rights Council

9. In its resolution 13/26 of 26 March 2010, the Human Rights Council again called upon States, inter alia, to ensure that any measure taken to counter terrorism complies with international law, in particular international human rights, refugee and humanitarian law, and to ensure that any person whose human rights have been violated has access to an effective remedy and that victims will receive adequate, effective and prompt reparations where appropriate. The Council also called upon States to safeguard the right to privacy and ensure that interferences with the right to privacy are regulated by law and subject to effective oversight and redress, including judicial review. It urged States to respect the right to be equal before the courts and tribunals, and to a fair trial, and further, to take all necessary steps to ensure that persons deprived of liberty enjoy the guarantees to which they are entitled under international law, including the review of their detention and other

fundamental judicial guarantees. The Council welcomed the decision by the Security Council in its resolution 1904 (2009) to establish an office of the Ombudsperson and requested the High Commissioner and the Special Rapporteur on the promotion and protection of human rights while countering terrorism to contribute further to the ongoing discussion regarding the efforts of Member States to assure adequate human rights guarantees to ensure fair and clear procedures, in particular with regard to placing on, reviewing and removing individuals and entities from terrorism-related sanctions lists. The Council invited the Office of the United Nations High Commissioner and the relevant special procedures of the Council to engage in further dialogue with the Security Council Counter-Terrorism Committee in order to promote a consistent approach to the protection of human rights and fundamental freedoms while countering terrorism, and would welcome further efforts by the Security Council Counter-Terrorism and 1267 Committees, in the fulfilment of their respective mandates, to integrate a human rights approach into its counter-terrorism objectives.

10. The Human Rights Council, in its resolution 13/19 of 26 March 2010, also addressed the role and responsibility of judges, prosecutors and lawyers in safeguarding the right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment. It urged States to ensure the proper functioning of the administration of justice, in particular by enabling the judiciary to exercise its judicial functions independently, impartially and professionally; taking effective measures to prevent and combat any unlawful interference of any kind, such as threats, harassment, intimidation and assaults on judges, prosecutors and lawyers, as well as ensuring that any such interference is promptly, effectively, independently and impartially investigated with a view to bringing those responsible to justice; and taking effective measures for combating corruption in the administration of justice, establishing proper legal aid programmes and having judges, prosecutors and lawyers adequately and in sufficient numbers selected, trained and remunerated. The Council called upon States to ensure that all judges, prosecutors and lawyers are educated and informed regarding the absolute prohibition of torture. It condemned any action or attempt by State officials to legalize, authorize or acquiesce in torture, including on grounds of national security, and called upon States to ensure accountability for acts of torture and to adopt legal and procedural safeguards, including an effective judicial review mechanism of the implementation and compliance with such safeguards.

11. The Council drew attention to the interference of counter-terrorism measures with the freedom of opinion and expression in its resolution 12/16 of 12 October 2009. It called upon States to refrain from using counter-terrorism as a pretext to restrict the right to freedom of opinion and expression. It expressed its concern that violations often occur related to surveillance, censorship, intimidation, persecution, arbitrary detention, torture and extrajudicial killing of persons who exercise and promote this right, including journalists and human rights defenders. These violations are facilitated and aggravated by the abuse of states of emergency. In its resolution 13/13 of 25 March 2010, the Human Rights Council expressed its concern that national security and counter-terrorism measures have been misused to target human rights defenders or have hindered their work and endangered their safety.

Universal periodic review

12. The Human Rights Council also addressed questions related to human rights and counter-terrorism in its recommendations to States under the universal periodic review. Recommendations included the need to ensure that legislation and policies for countering terrorism comply with States' international obligations related to human rights, international humanitarian law and refugee law.[2] A recurring issue of concern was respect for due process and fair trial guarantees,[3] including the use of incommunicado detention.[4] Other recommendations encouraged States to narrow the definition of terrorism,[5] and to introduce a moratorium on the death penalty in all cases.[6] The Working Group recommended that one State lift its long-standing state of emergency and replace it with a counter-terrorism law in accordance with human rights standards.[7] The recommendations of the universal periodic review also underscored the importance of respecting human rights, including freedom of expression,[8] assembly[9] and religion,[10] and the right to privacy,[11] while combating terrorism. Concerns were raised about the rights of the child and non-compliance by some States with the standards reflected in the Convention on the Rights of the Child,[12] including the trial of children as adults according to anti-terrorism legislation.[13] Recommendations were also made to States to combat terrorism financing[14] and terrorism on the Internet,[15] and to intensify cooperation with other countries in the fight against terrorism.[16] States were encouraged to give attention and provide adequate follow-up to the recommendations of the Special Rapporteur on the promotion and protection of human rights while countering terrorism following his visit to the respective countries[17] and to allow him free access to detention centres and communication with detainees.[18]

Special procedures

13. The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment, the Working Group on Arbitrary Detention and the Working Group on Enforced or Involuntary Disappearances conducted, as part of a consultative process with States, a joint study on global practices in relation to secret detention in the context of countering terrorism (see

[2] See A/HRC/13/11 and Add.1 and Corr.1, para. 101.82; A/HRC/14/17 and Add.1, para. 95.116; A/HRC/15/6, para. 85.28.
[3] See A/HRC/13/17, para. 97.91; A/HRC/14/10 and Add.1, para. 95.62; A/HRC/15/6, para. 87.15.
[4] See A/HRC/15/6, paras. 87.4 and 87.6.
[5] See A/HRC/13/17, para. 99.32.
[6] See A/HRC/14/10 and Add.1, para. 97.18.
[7] See A/HRC/14/17 and Add.1, paras. 95.79, 95.80, 95.112, 95.113, 95.115.
[8] See A/HRC/13/5 and Add.1 and Corr.1, para. 105.39; A/HRC/13/17, para. 97.91.
[9] See A/HRC/13/17, para. 97.91.
[10] See A/HRC/13/5 and Add.1 and Corr.1, para. 105.39.
[11] Ibid., para. 105.40.
[12] See A/HRC/15/13, para. 100.87.
[13] Ibid., para. 102.7.
[14] See A/HRC/15/2 and Add.1, para. 76.124.
[15] See A/HRC/15/11, para. 96.48.
[16] See A/HRC/15/6, para. 85.29.
[17] See A/HRC/14/17, para. 95.25; A/HRC/15/6, para. 87.17.
[18] See A/HRC/14/17 and Add.1, para. 99.11.

A/HRC/13/42). The study describes the international legal framework applicable to secret detention; provides an historical overview of the use of secret detention; addresses the use of secret detention in the context of the so-called global war on terror post 11 September 2001; and highlights examples relating to about 66 States from various geographical regions, that appear to have been implicated in instances of secret detention in the context of counter-terrorism. It also cites the names of individuals who may have been affected by this practice. Owing to its global nature, the study is not exhaustive, but aims to highlight and illustrate through examples the widespread practice of secret detention and related impunity. The study concludes with recommendations aimed at curbing secret detention and the unlawful treatment or punishment of detainees in the context of counter-terrorism. The Council considered the study at its fourteenth session in June 2010.

14. The report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism to the Human Rights Council (A/HRC/13/37 and Add.1-2) highlights concerns regarding the protection of the right to privacy in the fight against terrorism. The Special Rapporteur argues that article 17 of the International Covenant on Civil and Political Rights should be interpreted as containing elements of a permissible limitations test. In the absence of an exhaustive list of legitimate aims in article 17, the Special Rapporteur calls upon States to justify why a particular aim is legitimate justification for restrictions upon article 17. He also suggests that the Human Rights Committee should adopt a new general comment on article 17. The Special Rapporteur further highlights the erosion of the right to privacy in the fight against terrorism, which is occurring through the use of surveillance powers and new technologies without adequate legal safeguards. Without a rigorous set of legal safeguards and a means to measure the necessity, proportionality and reasonableness of the interference, States have no guidance on minimizing the risks to privacy generated by their new policies. The Special Rapporteur has identified some legal safeguards that have emerged through policymaking, jurisprudence, policy reviews and good practice from around the world.

15. In its resolution 10/15, the Human Rights Council requested the Special Rapporteur to prepare a compilation of good practices on legal and institutional frameworks and measures that ensure respect for human rights by intelligence agencies while countering terrorism, including on their oversight, and to present the compilation in a report to the Council. To this end, an expert workshop was held on 1 and 2 March 2010, with the support of OHCHR. To ensure consultation with Member States and other relevant stakeholders, and their meaningful participation in the process concerning the preparation of the report, a questionnaire requesting information on good practices in accordance with resolution 10/15 was sent to all Member States. In addition, on 15 April 2010, the Special Rapporteur held a public consultation on such practices with Member States, of which 48 attended. The Special Rapporteur submitted a compilation of 35 identified elements of good practices for consideration by the Human Rights Council at its fourteenth session.[19]

16. At the invitation of the Government, the Special Rapporteur conducted a visit to Egypt from 17 to 21 April 2009. In his report the Special Rapporteur examined the emergency law, criminal law provisions on terrorist crimes, and amended article 179 of the Constitution, which provides the current legal framework to combat

[19] See A/HRC/14/46 and Add.1.

terrorism in that country. He analysed some of the key issues and challenges that are expected to be addressed in the new anti-terrorism legislation under preparation, to which the Government has committed to enact in order to lift the state of emergency that has been in force, almost continuously, for more than 50 years. The Special Rapporteur also discussed the importance of a strict definition of the concept of terrorism and examined the renewal of detention orders and lack of compliance with court rulings regarding release. He also examined the use of special courts to try terrorist suspects, including the use of emergency security courts and military courts, and called for measures to ensure compliance with fair trial guarantees. Finally, he noted Egypt's leadership role, particularly in the region, in regard to the international fight against terrorism and expressed concern regarding the use of extraordinary renditions.

17. The report of the Special Rapporteur to the General Assembly at its sixty-fourth session (A/64/211 and Corr.1) offers an analysis of counter-terrorism measures from a gender perspective. It expands upon earlier reports of the Special Rapporteur to provide a comprehensive overview of the frequency and nature of gender-based human rights abuses in counter-terrorism measures and to explore the complex relationship between gender equality and countering terrorism.

18. The Special Rapporteur on summary, extrajudicial or arbitrary executions addressed the question of targeted killings in his report to the Human Rights Council at its fourteenth session (A/HRC/14/24/Add.6). He identified modern practices on targeted killings and focused on the recent increased use of targeted killings by a number of States in the context of armed conflict, as well as counter-terrorism and counter-insurgency operations. The report focused on new technologies used in recent years for targeted killings, including unmanned armed vehicles commonly known as drones, and identified States that have or are reportedly seeking such technology. The report describes the publicly available information about new targeted killing policies and addresses the main legal issues that have arisen. It identifies areas in which legal frameworks have been clearly violated or expanded beyond their permissible limits; where legal issues are unclear, it suggests approaches that would enable the international community to return to a normative framework that is consistent with its deep commitment to protection of the right to life, and the minimization of exceptions to that constitutive principle. The report also considers law enforcement "shoot-to-kill" policies that, in their premeditation, intent and identification of specific targets, may be considered examples of targeted killings.

19. The Special Rapporteur on freedom of religion or belief reported on allegations that national policies, legislation and practices that are designed to combat terrorism have had, and continue to have, adverse effects on the enjoyment of freedom of religion or belief worldwide (see A/64/159). According to the report of the Special Rapporteur, certain groups, such as migrants, asylum-seekers or members of particular national, racial or religious groups, seem to be specifically targeted. While States are obliged to take effective measures to combat terrorism, the Special Rapporteur emphasized that they also must ensure that counter-terrorism measures comply with their obligations under international law, in particular international human rights, refugee and humanitarian law.

20. The Special Rapporteur on the situation of human rights defenders addressed the issue of security and protection of human rights defenders in her most recent

report to the Human Rights Council (A/HRC/13/22, Add.1-4 and Corr.1). The Special Rapporteur noted that in certain countries human rights defenders are characterized as "terrorists", which contributes to the perception that defenders are legitimate targets for State and non-State actors. She also noted that in the context of counter-terrorism efforts some States continue to resort to ambiguous security laws to arrest and detain human rights defenders, often without charges. In some States, national intelligence and security services have the power to detain human rights defenders without charge for a prolonged period of time. In some instances, agents of intelligence and security services are granted immunity from prosecution and can therefore commit human rights violations against defenders in total impunity.

21. In her report to the Human Rights Council (A/HRC/13/23 and Add.1-3) at its thirteenth session, the Independent Expert on minority issues highlighted concerns over counter-terrorism measures in the context of her official visit to Canada, which took place from 13 to 23 October 2009. She called for Canada to ensure that counter-terrorism measures meet human rights standards and avoid profiling. Members of Muslim and Arab communities reported that Government policies post September 2001 have made them feel targeted, profiled and harassed. They described indiscriminate, unfair and unjust treatment by federal, provincial or territorial authorities, and racial profiling in the use of security certificates based on unsubstantiated information. The Independent Expert urged that steps be taken to address these concerns, answer allegations, and build positive relations and confidence among communities that feel targeted by national security legislation. The security certificates process in Canada is based on provisions of the Immigration and Refugee Protection Act (2001). Certificates can be issued to non-citizens as a preliminary step to detain and deport individuals on national security grounds. Numerous civil society groups claim that the powers authorized under these laws are used indiscriminately and are targeted against Muslims and Arabs, resulting in discriminatory impact. The Government noted that the security certificate process is a legal immigration proceeding and not a criminal proceeding and that it is neither arbitrary nor indiscriminate. Its aim is to remove non-Canadians who pose a serious threat to national security or public safety.

22. In the report on her visit to Kazakhstan from 6 to 15 July 2009 (A/HRC/13/23/Add.1), the Independent Expert noted concerns expressed by civil society and some "non-traditional" religious groups that the Government has, without cause, attempted to justify restrictive policies and the activities of national security agencies on the grounds of "the fight against separatism, extremism and terrorism". Such groups complain of discriminatory registration practices, public statements and publications by the Government warning the population against certain religious faiths, the unjustified confiscation of property, the imposition of fines, arrests, deportations and other abuses of power by police, national security agents and bureaucrats that appear to constitute repression of religious groups. The Independent Expert stressed her concern about such practices, justified on national security grounds, and noted that the Government must not determine that someone's belief system or activities constitute a threat to national stability or individual security that is punishable without the commission of a criminal act.

23. The Special Rapporteur on the human rights of migrants addressed issues related to the protection of human rights in the context of countering terrorism. In his report following his country visit to the United Kingdom of Great Britain and Northern Ireland (see A/HRC/14/30/Add.3), he welcomed the revisions undertaken

in 2006 and 2009 to the long-term strategy for countering international terrorism, by virtue of which the observance of international law and human rights standards and the promotion of good governance were included as guiding principles in all counter-terrorism efforts. However, he expressed concern about the human rights implications of the use of the grounds of "national security" and the "terrorism threat" to deprive non-nationals legally married to British nationals of the right to stay in the territory of the United Kingdom. He noted his concern about allegations of disproportionate scrutiny and instances of psychological mistreatment of persons entering the United Kingdom with valid documentation and regretted that this kind of situation fuels a climate of mistrust and intolerance at entry checkpoints. He also expressed concern on allegations about interrogation and excessive delays at airports, which in some instances have caused financial or other harm to persons in transit or entering the country, sometimes for short-term visits. He observed with dismay that these practices were based on race, colour, descent or national or ethnic origin and, in some instances, pregnancy status.

24. In this regard, the Special Rapporteur on the human rights of migrants recalled that, in his view, these allegations contrast with principles of human dignity and appear inconsistent with the jus cogens prohibition of discrimination. He further recommended that the Government ensure in law and practice respect for the prohibition of discrimination and establish monitoring mechanisms to avoid disproportionate scrutiny and psychological mistreatment of persons entering the United Kingdom with valid documentation. He also recommended that the Government take all necessary measures to prohibit in law and practice the use of profiles that reflect unexamined generalizations, such as profiling based on ethnic or national origin or religion.

25. In its annual report (A/HRC/13/30 and Add.1-3), the Working Group on Arbitrary Detention expressed concern about the continuing practice of States to apply administrative detention regimes, including in the fight against cross-border terrorism. It reiterated the need to strengthen the institution of habeas corpus to combat arbitrary detention.

26. After its eighty-seventh session in March 2009, the Working Group on Enforced or Involuntary Disappearances transmitted general allegations to the Governments of Azerbaijan, Bosnia and Herzegovina, Cyprus, Czech Republic, Denmark, Germany, Ireland, Italy, the former Yugoslav Republic of Macedonia, Poland, Portugal, Romania, Spain, Sweden and the United Kingdom of Great Britain and Northern Ireland, concerning their alleged past involvement in practices of renditions and/or secret detention. The summaries of these allegations and the replies of some Governments are contained in the report of the Working Group (A/HRC/13/31 and Add.1 and Corr.1). In its report, the Working Group also expressed concern about measures being taken in the context of counter-terrorism and their implications for enforced disappearances, including the enactment of legislation that restricts personal freedoms and weakens due process; random arrests committed during military operations; arbitrary detentions and extraordinary renditions, which amount to enforced disappearances. The Working Group called upon States to take legislative, judicial and administrative or other measures to deal with the issue. The Working Group recalled its general comment on article 10 of the Declaration on the Protection of All Persons from Enforced Disappearances, which states that under no circumstances, including states of war or public emergency, can any State interests be invoked to justify or legitimize secret centres or places of

detention which, by definition, would violate the Declaration, without exception. In a press release dated 30 August 2009, the Working Group expressed its concern at, inter alia, measures being taken by Governments while countering terrorism and the implications for enforced disappearances, and stressed that arrests committed during military operations, arbitrary detentions and extraordinary renditions can amount to enforced disappearances.

D. Human rights treaty bodies

27. The Human Rights Committee, the Committee against Torture, the Committee on the Rights of the Child, the Committee on Economic, Social and Cultural Rights, and the Committee on the Elimination of Racial Discrimination continued to examine the compliance of States parties to the treaties with their legal obligations to respect human rights in the context of countering terrorism.

28. Major issues of concern to the Human Rights Committee and the Committee against Torture include alleged practices of torture and ill treatment of detainees, and violations of the principle of non-refoulement.[20] The Committees recalled that under no circumstances should States expel, return or extradite persons suspected of terrorism to a State where there are substantial grounds for believing that they would be in danger of being subjected to torture or ill treatment.[21] The Committee against Torture reiterated that the absolute prohibition of torture is endangered by the continuing reliance on diplomatic assurances of countries known to resort to torture and by involvement in "extraordinary renditions" and secret detentions.[22] In consideration of one State party report, the Human Rights Committee urged the State to exercise the utmost care in the use of diplomatic assurances, taking into account the fact that the more systematic the practice of torture, the less likely it will be that the risk of such treatment can by avoided through assurances.[23] It also recalled that no statements or confessions made under torture should be used as evidence for convictions.[24] In its consideration of another State party report, the Committee expressed its concern that allegations of a widespread practice of torture are seldom investigated and prosecuted, thereby favouring a climate of impunity.[25] In relation to another State party, the Committee against Torture reiterated its previous recommendation that the State party take appropriate legislative measures to guarantee detainees immediate access to a lawyer during police custody and make video recording of interrogations of all persons questioned.[26]

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[20] See CAT/C/JOR/CO/2 (2010), para. 23; CAT/C/SYR/CO/1 (2010), para. 18; CAT/C/YEM/CO/2/Rev.1 (2010), para. 22; CCPR/C/RUS/CO/6 and Add.1 and Corr.1 (2009), para. 17.

[21] See CAT/C/JOR/CO/2 (2010), para. 23; CAT/C/SYR/CO/1 (2010), para. 18; CAT/C/AZE/CO/3 (2009), para. 22; CCPR/C/RUS/CO/6 and Add.1 and Corr.1 (2009), para. 17.

[22] See CAT/C/JOR/CO/2 (2010), para. 23; CAT/C/SYR/CO/1 (2010), para. 18; CAT/C/YEM/CO/2/Rev.1 (2010), para. 11.

[23] See CCPR/C/RUS/CO/6 and Add.1 and Corr.1 (2009), para. 17.

[24] Ibid., para. 8.

[25] See CAT/C/YEM/CO/2/Rev.1 (2010), para. 8.

29. Other recurring issues of concern to the treaty bodies include the vague and broad definition of terrorism in many national legislations;[27] lack of safeguards related to due process and fair trial, including arbitrary arrest and indefinite detention without charge or trial;[28] incommunicado detention;[29] lack of immediate access to a lawyer and examination of the grounds for detention by a court;[30] lack of a review mechanism to challenge the designation as terrorist;[31] the possibility of courts to receive or hear classified security information against terrorist suspects in their absence;[31] infringements of the right to presumption of innocence;[32] discriminatory application of counter-terrorism laws,[33] including excessive use of force against indigenous communities;[34] limitations to the right to privacy, such as interference in daily life by administrative "disturbance orders";[35] infringements of the rights of the child, including the prosecution of children on terrorist charges as adults without protection of juvenile justice standards,[36] extrajudicial killings of children allegedly fighting as guerrilla members,[37] life imprisonment,[38] inadequate legal representation and interpretation assistance,[39] prolonged periods of solitary confinement and abuse in inhumane and degrading conditions,[39] impossibility of family visits,[39] and recruitment of children to participate in terrorist activities.[40] Concern also was expressed over the discriminatory effect that counter-terrorism measures and legislation can have on the enjoyment of economic, social and cultural rights by certain groups, in particular ethnic minorities.[41]

III. Activities of the United Nations High Commissioner for Human Rights and of the Office of the United Nations High Commissioner for Human Rights

30. In line with General Assembly resolution 64/168 and Human Rights Council resolution 13/26, which encourage enhanced dialogue and cooperation between the Security Council and its Counter-Terrorism Committee, and OHCHR and relevant human rights bodies, in October 2009 the High Commissioner briefed the Counter-Terrorism Committee on key human rights issues that fall within the mandate of the Committee. The High Commissioner underscored that the time had come for the Security Council's counter-terrorism bodies to consider a broader approach in their vital work in this area, such as that adopted by the General Assembly in the Global

[27] See CAT/C/JOR/CO/2 (2010), para. 17; CAT/C/YEM/CO/2/Rev.1 (2010), para. 11; CCPR/C/TZA/CO/4 (2009), para. 12; CCPR/C/RUS/CO/6 and Add.1 and Corr.1 (2009), para. 7 (a); CRC/C/TUN/CO/3 (2010), para. 65.
[28] See CAT/C/YEM/CO/2/Rev.1 (2010), para. 11.
[29] See CAT/C/ESP/CO/5 (2009), para. 12.
[30] See CCPR/C/UZB/CO/3 (2010), para. 15.
[31] See CCPR/C/NZL/CO/5 (2010), para. 13.
[32] See CCPR/C/TZA/CO/4 (2009), para. 12.
[33] See CERD/C/CHL/CO/15-18 (2009), para. 15.
[34] See CCPR/C/NZL/CO/5 (2010), para. 14.
[35] See CCPR/C/NLD/CO/4 (2009), para. 15.
[36] See CRC/C/OPAC/TUR/CO/1 (2009), paras. 18 and 19.
[37] See CRC/C/OPAC/COL/CO/1 (2010), para. 8.
[38] See CRC/C/OPAC/TUR/CO/1 (2009), para. 18.
[39] See CRC/C/OPAC/ISR/CO/1 (2010), para. 34.
[40] See CRC/C/PAK/CO/3-4 (2009), paras. 80 and 81.
[41] See E/C.12/KAZ/CO/1 (2010), para. 39.

Counter-Terrorism Strategy. She noted that because the Counter-Terrorism Committee and the United Nations human rights machinery review counter-terrorism laws and measures in parallel, better cooperation between them could provide additional legitimacy and coherence to the United Nations system as a whole. The High Commissioner noted the key role that could be played by the Counter-Terrorism Committee in placing the rule of law and human rights at the core of the fight against terrorism in areas, including the question of legality; the need to respect and protect non-derogable rights; the expansion of surveillance powers and capacities of law enforcement agencies, and the need to adequately protect the right to privacy; accountability for human rights violations; the issue of targeted sanctions, and the need for further improvements to ensure a fair and transparent listing process, including accessible and independent mechanisms for review; and issues regarding the proper integration of a human rights approach to the technical work of the Counter-Terrorism Committee.

31. In carrying out her mandate, the United Nations High Commissioner for Human Rights has continued to examine the question of the protection of human rights and fundamental freedoms while countering terrorism and to make general recommendations about the obligations of States in this regard. In her report to the Human Rights Council at its twelfth session, the High Commissioner analysed the links between economic, social and cultural rights, and terrorism and counter-terrorism measures.[42] The High Commissioner urged States, when adopting exceptional counter-terrorism measures to pay particular attention to their impact on human rights, in particular economic, social and cultural rights, as these can have a particularly damaging effect on vulnerable communities, including the potential risk of leading to radicalization. She encouraged States to become party to the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights once it is open for signature, and to develop national mechanisms to address the issue of remedies and reparations for victims of violations of economic, social and cultural rights. In developing counter-terrorism legislation, policies and measures, the High Commissioner urged States to examine their impact on economic, social and cultural rights in order to ensure that all the requirements relating to their protection are respected, including by ensuring the allocation of sufficient resources.

32. In her report to the Council at its thirteenth session, the High Commissioner addressed a number of challenges related to accountability for serious violations of human rights that have taken place in the context of counter-terrorism measures, as well as the rights of victims to remedy and reparations.[43] The High Commissioner noted her concern in relation to covert actions, which raise particular challenges for accountability as these are secretive in nature and involve classified information, and therefore may be beyond the purview of the legislature and judiciary. She recalled that all measures taken by law enforcement agencies must be lawful under national and international law, and compatible with States' human rights obligations. All activities undertaken by intelligence agencies must be regulated by law, monitored by independent agencies, and subject to judicial review. Where serious violations of human rights occur, States have the duty to ensure that such violations are properly investigated and, wherever possible, subject to a judicial or other appropriate response. The High Commissioner also highlighted States' obligations

[42] See A/HRC/12/22.

[43] See A/HRC/13/36.

to respect the right to truth, justice and reparation, including not only the right to compensation and restitution, but also the right to rehabilitation, satisfaction and guarantees of non-repetition, as described by the United Nations set of principles for the protection and promotion of human rights through action to combat impunity.

33. In addition to its activities as Chair of the Counter-Terrorism Implementation Task Force Working Group on Protecting Human Rights While Countering Terrorism, as reflected in section II.A of the present report, the Office of the United Nations High Commissioner participated in an Arria formula meeting convened by the Government of Mexico in November 2009, with members of the Eminent Jurist Panel on Terrorism, Counter-Terrorism and Human Rights of the International Commission of Jurists on strengthening an integrated approach to human rights and counter-terrorism through the role of the Security Council. OHCHR also contributed to regional workshops for police officers and prosecutors in South Asia organized by the Counter-Terrorism Committee Executive Directorate in November 2009 in Dhaka, and in June 2010 in Colombo, by helping to lead working sessions that focused on ensuring respect for human rights in the course of operational activities related to counter-terrorism. In June 2010, the OHCHR Regional Office for Europe participated in a seminar organized by the Center on Global Counter-terrorism Cooperation, in cooperation with the Directorate for External Relations of the European Commission in Brussels, which focused on the work of the European Union on counter-terrorism while promoting and protecting human rights in the context of the United Nations Global Counter-Terrorism Strategy.

IV. Conclusions

34. **The United Nations High Commissioner for Human Rights, the human rights treaty bodies, the Human Rights Council and its various special procedures continue to express grave concerns including with regard to practices of torture and ill treatment of detainees, and violations of the principle of non-refoulement, as well as the vague and broad definition of terrorism in national legislations; lack of safeguards related to due process and fair trial, including arbitrary arrest and indefinite detention without charge or trial; and incommunicado detention.**

35. **I urge Member States to fully implement the Global Strategy on Counter-Terrorism and to ensure respect for human rights and the rule of law as the fundamental basis of all counter-terrorism measures. All States countering terrorism must comply with their obligations under international law, in particular by ensuring respect for the absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment; ensuring that all persons deprived of liberty benefit from the guarantees to which they are entitled under international law, including the review of the detention and other fundamental judicial guarantees; ensuring that no form of deprivation of liberty places a detained person outside the protection of the law; respecting due process obligations and the right to a fair trial; abiding fully by non-refoulement obligations; ensuring legality in the criminalization of acts of terrorism; and respecting the right to an effective remedy.**

36. **The Counter-Terrorism Implementation Task Force, its Working Groups and entities should continue to ensure respect for human rights and the rule of**

law as the fundamental basis for their work in assisting Member States in implementing the Global Strategy.

37. **The Counter-Terrorism Committee and the Counter-Terrorism Committee Executive Directorate are encouraged to continue in their efforts to place respect for the rule of law and human rights at the core of the fight against terrorism in areas within the scope of their mandates.**